

**To:** Shea N. Palavan([shea@houstonip.com](mailto:shea@houstonip.com))  
**Subject:** U.S. Trademark Application Serial No. 97624857 - BRAIN POWER PSYCH EMPOWER CHANGE GROW  
**Sent:** July 26, 2023 09:52:25 PM EDT  
**Sent As:** [tmng.notices@uspto.gov](mailto:tmng.notices@uspto.gov)

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**Attachments**

[screenshot-www-merriam-webster-com-dictionary-psych-16903773987631](#)  
[screenshot-www-merriam-webster-com-dictionary-psychological-16903784559851](#)  
[6064836](#)

**United States Patent and Trademark Office (USPTO)**  
**Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial No.** 97624857

**Mark:** BRAIN POWER PSYCH EMPOWER CHANGE GROW

**Correspondence Address:**

SHEA N. PALAVAN  
PALAVAN & MOORE, PLLC  
5353 WEST ALABAMA STREET, SUITE 303  
HOUSTON TX 77056  
UNITED STATES

**Applicant:** Brain Power Psychology, Inc.

**Reference/Docket No.** N/A

**Correspondence Email Address:** [shea@houstonip.com](mailto:shea@houstonip.com)

**NONFINAL OFFICE ACTION**

**Response deadline.** File a response to this nonfinal Office action within three months of the “Issue date” below to avoid [abandonment](#) of the application. Review the Office action and respond using one of the links to the appropriate electronic forms in the “How to respond” section below.

**Request an extension.** For a fee, applicant may [request one three-month extension](#) of the response deadline prior to filing a response. The request must be filed within three months of the “Issue date” below. If the extension request is granted, the USPTO must receive applicant’s response to this letter within six months of the “Issue date” to avoid abandonment of the application.

**Issue date:** July 26, 2023

The assigned examining attorney has reviewed the referenced application and determined the

following.

## REGISTRATION

### *Likelihood of Confusion*

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 6064836. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* *See the enclosed registration.*

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, “not all of the *DuPont* factors are relevant or of similar weight in every case.” *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

The proposed mark is closely related to the prior registered mark in each of the factors listed above in the *DuPont* case. The sound, commercial meaning, and impression of the marks are closely related. Applicant's mark is BRAIN POWER PSYCH EMPOWER CHANGE GROW. Registrant's mark is BRAIN POWER. The term PSYCH is highly descriptive of applicant's services. As such, the dominant portion of applicant's mark is identical to registrant's mark. BRAIN POWER is dominant because it appears first and is more likely to be impressed on the minds of consumers.

The compared goods and/or services need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Applicant offers a wide variety of psychological services and testing; registrant offers a wide variety of mental health services. Psychological services are in the field of mental health. *See attached definitions.* The services are overlapping. Consumers, therefore, are likely to believe that the services

of the parties originate from the same source.

Registration of the proposed mark must therefore be refused. Applicant may, however, offer evidence in support of registration.

## INFORMALITIES

If applicant chooses to respond to the refusal to register, applicant must also respond to the following informalities:

### *Specimen of Use*

**Specimen is merely a drawing or depiction of the mark.** Registration is refused because the specimen is merely a photocopy of the drawing or a depiction of the applied-for mark and does not show the applied-for mark as actually used in commerce with the goods and/or services in International Class(es) 35, 42 and 44. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a), (c); *In re Chica*, 84 USPQ2d 1845, 1848 (TTAB 2007); TMEP §§904, 904.07(a), 1301.04(g)(i). An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark as actually used in commerce for each international class of goods and/or services identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

**Examples of specimens.** Specimens for goods include a photograph of (1) the actual goods bearing the mark; (2) an actual container, packaging, tag or label for the goods bearing the mark; or (3) a point-of-sale display showing the mark directly associated with the goods. *See* 37 C.F.R. §2.56(b)(1), (c); TMEP §904.03(a)-(m). A webpage specimen submitted as a display associated with the goods must show the mark in association with a picture or textual description of the goods and include information necessary for ordering the goods. TMEP §904.03(i); *see* 37 C.F.R. §2.56(b)(1), (c).

Specimens for services must show a direct association between the mark and the services and include: (1) copies of advertising and marketing material, (2) a photograph of business signage or billboards, or (3) materials showing the mark in the sale, rendering, or advertising of the services. *See* 37 C.F.R. §2.56(b)(2), (c); TMEP §1301.04(a), (h)(iv)(C).

Any webpage printout or screenshot submitted as a specimen must include the webpage's URL and the date it was accessed or printed on the specimen itself, within the TEAS form that submits the specimen, or in a verified statement under 37 C.F.R. §2.20 or 28 U.S.C. §1746 in a later-filed response. *See* 37 C.F.R. §2.56(c); TMEP §§904.03(i), 1301.04(a).

**Response options.** Applicant may respond to this refusal by satisfying one of the following for each applicable international class:

- (1) Submit a different specimen (a verified “[substitute](#)” specimen) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the application or amendment to allege use. A “verified substitute specimen” is a specimen that is accompanied by the following statement made in a signed affidavit or supported by a declaration under 37 C.F.R. §2.20: “The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in

use in commerce at least as early as the filing date of the application or prior to the filing of the amendment to allege use.” The substitute specimen cannot be accepted without this statement.

(2) Amend the filing basis to [intent to use under Section 1\(b\)](#) (which includes withdrawing an amendment to allege use, if one was filed), as no specimen is required before publication. This option will later necessitate additional fee(s) and filing requirements, including a specimen.

For an overview of the response options referenced above and instructions on how to satisfy these options using the online Trademark Electronic Application System (TEAS) form, see the [Specimen webpage](#).

### ***Disclaimer***

Applicant must disclaim the wording “PSYCH” because it is merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s goods and/or services. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); TMEP §§1213, 1213.03(a).

The attached evidence from the Merriam-Webster Dictionary shows this wording means psychological. Thus, the wording merely describes applicant’s services because they are psychological.

Applicant may respond to this issue by submitting a disclaimer in the following format:

**No claim is made to the exclusive right to use “PSYCH” apart from the mark as shown.**

For an overview of disclaimers and instructions on how to provide one using the Trademark Electronic Application System (TEAS), see the [Disclaimer webpage](#).

### ***Applicant’s Response***

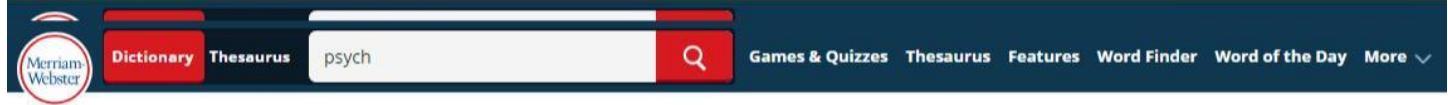
Guidelines for responding are set forth below.

**How to respond.** File a [response form to this nonfinal Office action](#) or file a [request form for an extension of time to file a response](#).

/William Breckenfeld/  
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William.Breckenfeld@USPTO.GOV

## RESPONSE GUIDANCE

- **Missing the deadline for responding to this letter will cause the application to [abandon](#).** A response or extension request must be received by the USPTO before 11:59 p.m. **Eastern Time** of the last day of the response deadline. Trademark Electronic Application System (TEAS) [system availability](#) could affect an applicant's ability to timely respond. For help resolving technical issues with TEAS, email [TEAS@uspto.gov](mailto:TEAS@uspto.gov).
- **[Responses signed by an unauthorized party](#)** are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find [contact information for the supervisor](#)** of the office or unit listed in the signature block.



# psych <sup>1 of 3</sup> verb

**verb** <sup>3</sup> [Synonyms](#) [Example Sentences](#) [Word History](#) [Phrases Containing](#) [Entries Near](#)

**variants** or less commonly **psyche**

**psyched; psyching**

*transitive verb*

**1** : **PSYCHOANALYZE**

**2 a** : to anticipate correctly the intentions or actions of : **OUTGUESS**

**b** : to analyze or figure out (something, such as a problem or course of action)

| I *psyched* it all out by myself and decided

— David Hulburd

**3 a** : to make **psychologically** uneasy : **INTIMIDATE**, **SCARE**

| pressure doesn't *psych* me

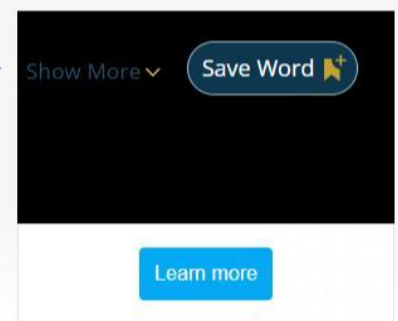
— Jerry Quarry

→ often used with *out*

| has a way of *psyching* out the competition

**b** : to make (someone, such as oneself) psychologically ready especially for performance → often used with *up*

| *psyched* herself up for the race



[Learn more](#)



# psych <sup>2 of 3</sup> abbreviation

*psychology*

# psych- <sup>3 of 3</sup> combining form

**variants** or **psycho-**

1 : mind : mental processes and activities

| *psychodynamic*

| *psychology*

2 : psychological methods

| *psychoanalysis*

| *psychotherapy*

3 : brain

| *psychosurgery*

4 : mental and

| *psychosomatic*



WORD OF THE DAY

**stoic** 

[See Definitions and Examples »](#)


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variants or less commonly **psychologic** (ˌsɪ-kə-ˈlă-jɪk ◀▶)

Synonyms of *psychological* >

- 1 **a** : of or relating to *psychology*  
**b** : **MENTAL**
- 2 : directed toward the will or toward the mind specifically in its conative function

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# psychological adjective

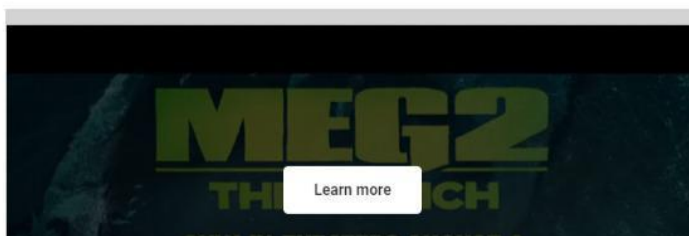
**Definition**      *psychological* (ˌsɪ-kə-ˈlă-jɪ-kəl ◀▶)

variants or less commonly **psychologic** (ˌsɪ-kə-ˈlă-jɪk ◀▶)

Synonyms of *psychological* >

- 1 **a** : of or relating to *psychology*  
**b** : **MENTAL**
- 2 : directed toward the will or toward the mind specifically in its conative function  
*psychological* warfare

**psychologically** (ˌsɪ-kə-ˈlă-jɪ-k(ə-)lē ◀▶) *adverb*



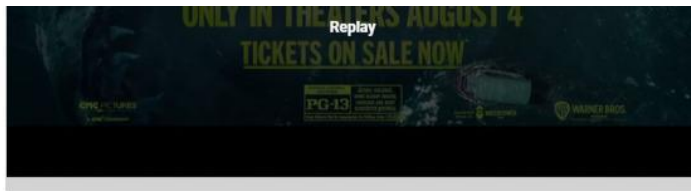
**Quordle**

W	O	R	D	Y
L	O	V	E	R
P	L	A	Y	S
D	A	I	L	Y

Can you solve 4 words at once?

**Play**





## Synonyms

cerebral                      inner                      intellectual  
interior                      internal                      mental

[See all Synonyms & Antonyms in Thesaurus >](#)

## Example Sentences

| a *psychological* rather than a physical condition

| suffered from *psychological* disorders all of his life

## Recent Examples on the Web

The 1996 *psychological* thriller, directed by James Foley (Fifty Shades Darker, Fifty Shades Freed), was one of the actress's first films.

—Jen Juneau, *Peoplemag*, 12 July 2023

To recap, the *psychological* norm for most people is to not be confrontational.

—Sean McDonnell, *cleveland*, 12 July 2023

Little said the damage caused by two days of unrelenting rain was a *psychological*



WORD OF THE DAY

**stoic** 

[See Definitions and Examples »](#)

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**(4) STANDARD CHARACTER MARK**

**Brain Power**

**Mark Punctuated**

BRAIN POWER

**Translation**

**Goods/Services**

- IC 028. US 022 023 038 050.G & S: Virtual reality headsets and helmets adapted for use in playing video games. FIRST USE: 20150100. FIRST USE IN COMMERCE: 20150100
- IC 044. US 100 101.G & S: Mental health counseling and psychotherapy as it relates to relationships; Mental health screening services; Mental health services; Mental health therapy services; Providing mental health and wellness information; Providing a web site featuring information in the field of mental health and physical health, including living a healthy and disease free life; Providing a web site featuring information in the field of mental health and wellness; Providing an internet website featuring news and information relating to diagnosis and treatment of autism; Providing news and information in the field of autism and/or enhanced mental fitness and/or other fields of mental and/or physical health. FIRST USE: 20140100. FIRST USE IN COMMERCE: 20140100

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Design Code**

**Serial Number**

87977361

**Filing Date**

20160922

**Current Filing Basis**

1A

**Original Filing Basis**

1B

**Publication for Opposition Date**

20190122

**Registration Number**

6064836

**Date Registered**

20200526

**Owner**

(REGISTRANT) Sahin, Nedim T INDIVIDUAL UNITED STATES 23 Pinckney St Boston  
MASSACHUSETTS 02114

**Priority Date**

**Disclaimer Statement**

**Description of Mark**

**Type of Mark**

TRADEMARK. SERVICE MARK

**Register**

PRINCIPAL

**Live Dead Indicator**

LIVE

**Attorney of Record**

## United States Patent and Trademark Office (USPTO)

### USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued  
on July 26, 2023 for  
**U.S. Trademark Application Serial No. 97624857**

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action to avoid your application abandoning. Follow the steps below.

- (1) **[Read the Office action](#)**. This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS). Your response, or extension request, must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response deadline. Otherwise, your application will be **[abandoned](#)**. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO [website](#), the application process, the status of your application, and whether there are outstanding deadlines to the [Trademark Assistance Center \(TAC\)](#).

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

### GENERAL GUIDANCE

- **[Check the status](#) of your application periodically** in the [Trademark Status & Document Retrieval \(TSDR\)](#) database to avoid missing critical deadlines.
- **[Update your correspondence email address](#)** to ensure you receive important USPTO notices about your application.
- **[Beware of trademark-related scams](#)**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. Verify the correspondence originated from us by using your serial number in our database, [TSDR](#), to confirm that it appears under the “Documents” tab, or contact the [Trademark Assistance Center](#).
- **[Hiring a U.S.-licensed attorney](#)**. If you do not have an attorney and are not required to

have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.